

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4804 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ABDUL UFE PAYAROTI SIPAHI

Versus

DIST MAGISTRATE

Appearance:

MR YS LAKHANI for Petitioner

MR KC SHAH, A.G.P. for Respondents

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 29/08/96

ORAL JUDGEMENT

1. By way of this petition under Article 226 of the Constitution of India, the petitioner - detenu Abdul Urfe Payaroti Sipahi has brought under challenge the detention order dated 30th March 1996 rendered by the first respondent under Sec. 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (Act No.16 of 1985), hereinafter referred to as "the PASA Act."

2. In the grounds of detention supplied to the detenu, the detaining authority has placed reliance on criminal cases registered with Ahmedabad Rural/Viramgam Police Station. They may be enumerated as under :

1. CR No. 67/93 U/ss.224, 225 & 114 I.P.C. The matter is pending in Court.
2. II CR No.85/95 U/s.186 I.P.C. The matter is pending in Court.
3. Prohi.CR 98/95 U/s.66B of the Bombay Prohibition Act. The matter is pending in Court.
4. Prohi.CR 240/95 U/ss.66B, 65E, 116(2) & 81 of the Bombay Prohibition Act. The matter is pending in the Court.

As stated above, all the aforesaid cases are pending trial. Besides, the detaining authority has also placed reliance upon the statements of eight witnesses alleging that the detenu has been extorting money and committing offences of extortion and beating the witnesses and creating atmosphere of fear in the concerned localities. Considering these materials the detaining authority was of the view that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it was absolutely necessary to pass an order of detention against him. This is how the impugned order came to be passed and the petitioner has been stamped as a boot-legger as well as a dangerous person.

3. I have heard the learned advocate for the petitioner and the learned A.G.P. for the State. This petition is capable of being disposed of on the first submission made by Mr.Lakhani, learned Advocate for the petitioner and hence, it would not be necessary to deal with other contentions and grounds advanced to present the cause of the petitioner. It has been contended that the cases registered against the petitioner at Viramgam Town Police Station I CR No.67/93 and Viramgam Town Police Station II CR No.85/95 are the cases falling neither under Chapter 16 nor under Chapter 17 of the I.P.C., as can be seen from Page : 29 (internal page No.9) of the grounds of detention, whereas the detaining authority has relied upon such cases as the cases falling under the said Chapters of the I.P.C. The allegations made in the aforesaid C.R. Numbers are yet to be

established. However, assuming that the allegations made in the grounds of detention are true, in that event also, at the most the detenu can be held responsible for committing breach of law and order and cannot be held responsible for the breach of public order. Under the circumstances, the subjective satisfaction arrived at by the detaining authority to the effect that with a view to maintaining public order, the detention of the detenu is necessary, is not genuine and therefore, based on extraneous grounds. Hence, the impugned order of detention cannot be said to be legal and valid. Reliance has been placed on the decision of this Court rendered on 3.7.1996 (Coram : K.R.Vyas, J.) in Special Civil Application No.1610/96. There also, individual charges were of theft. It was held that all the cases registered against the detenu there were for the alleged offences of lurking house trespass and theft filed against the detenu. It was, therefore, held that there was no question of breach of public order. The present case stands on a little different footing inasmuch as the detaining authority has placed reliance on the material as aforesaid which does not fall under Chapter 16 or 17 of the I.P.C., although the subjective satisfaction has been derived on the footing that the offences which have been registered against the detenu are of Chapters 16 & 17 of the I.P.C. Thus, there is apparent non-application of mind on the part of the detaining authority and the consideration of extraneous material for forming the opinion as per the impugned order of detention would vitiate the same. Hence, in the facts and circumstances of the case, the subjective satisfaction reached by the detaining authority cannot be said to be genuine.

4. In the result, the petition is allowed. The impugned order of detention is quashed and set aside. The petitioner-detenu Abdul Urfe Payaroti Sipahi shall be forthwith set at liberty if he is not required for any other case. Rule made absolute accordingly.

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